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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,145	07/31/2003	Garland L. Segner	EV31008US	1829

9561 7590 12/01/2010
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EXAMINER

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ART UNIT	PAPER NUMBER
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3736

MAIL DATE	DELIVERY MODE
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12/01/2010

PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GARLAND L. SEGNER, KENT D. ANDERSON,
DOUGLAS B. P. MOLLAND, THOMAS L. CLUBB,
and MICHAEL J. URICK

Appeal 2009-012320
Application 10/632,145
Technology Center 3700

Before DONALD E. ADAMS, ERIC GRIMES, and LORA M. GREEN,
Administrative Patent Judges.

GRIMES, *Administrative Patent Judge.*

DECISION ON APPEAL¹

This is an appeal under 35 U.S.C. § 134 involving claims to a guide wire. The Examiner has rejected the claims as anticipated and obvious. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Claims 1, 2, 7-9, 12-14, 17-19, 24, 25, 30, 33-35, 38-40, and 48 are on appeal. Claim 24 is representative and reads as follows:

24. A guide wire comprising:
an elongate, flexible core having a proximal region, a proximal end, a distal region, and a distal end, and the distal region having a tapered portion;
a single coil comprising 3 to 24 wire strands, each of the 3 to 24 wire strands being formed in a single helix and wrapped helically parallel to one another to thereby form the single coil, the single coil having a longitudinal central axis and an interior, and at least a portion of the tapered distal region of the core being disposed within the interior of the single coil; and
a polymer tie layer disposed on at least a portion of the wire strands, wherein the polymer tie layer provides the only form of attachment between the wire strands and the core, and
wherein the angle between the wire strands and the longitudinal central axis is from 10 to 45 degrees.

The claims stand rejected as follows:

- Claims 24, 30, 33-35, 38-40, and 48 under 35 U.S.C. § 102(b) in view of Avellanet;² and
- Claims 1, 2, 7-9, 12-14, 17-19, and 25 under 35 U.S.C. § 103(a) in view of Avellanet and Palermo.³

I.

Issue

The Examiner has rejected claims 24, 30, 33-35, 38-40, and 48 as being anticipated by Avellanet. The Examiner finds that Avellanet discloses a guide wire comprising all of the limitations of claim 24 (Answer 3-4),

² Avellanet et al., US 6,019,736, issued Feb. 1, 2000.

³ Palermo et al., US 5,749,837, issued May 12, 1998.

including an “angle between the wire strands and the longitudinal axis ... from 10 and 45 degrees (as best seen in Figure 11)” (*id.* at 4).

Appellants contend that “Avellanet does not teach or suggest the claimed range for the angle of from 10 to 45 degrees” (Appeal Br. 6).

The issue with respect to this rejection is: Does the evidence of record support the Examiner’s finding that Avellanet discloses a guide wire in which “the angle between the wire strands and the longitudinal central axis is from 10 to 45 degrees?”

Findings of Fact

1. Avellanet discloses “an improved catheter guidewire of the type comprising a coil which protects the distal end” (Avellanet, col. 4, ll. 13-14).

2. Figure 11 of Avellanet is shown below:

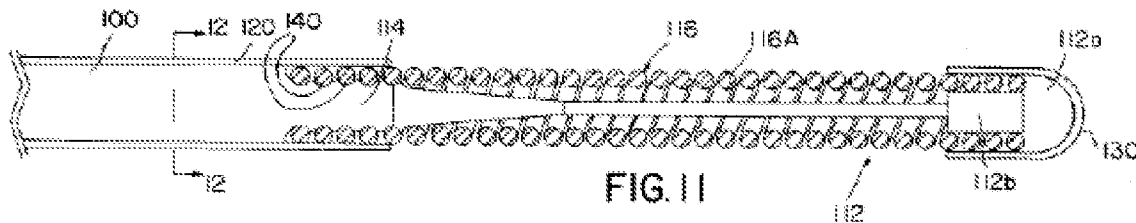


Figure 11 shows “a side view of a guidewire having multifilament, drawn round core and distal portions, and a plastic-coated metal coil, shown in cross-section” (*id.* at col. 4, ll. 48-50).

3. Figure 8 of the Specification is shown below:

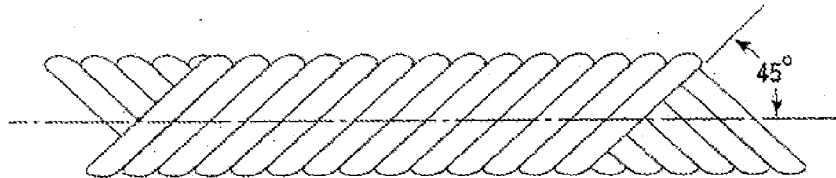


Figure 8 shows “a side view of a section of stranded wires” (Spec. 5: 3) “where the angle θ (theta) is 45 degrees” (*id.* at 15: 7).

4. The Specification discloses that “[f]or the stranded wires used in this invention[,] angles of 10 to 45 degrees are generally preferred, and angles of 15 to 30 degrees are particularly preferred. These angles provide good tip strength without danger of tip elongation and fracture during use.” (*Id.* at 15: 10-13.)

Principles of Law

[T]he PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant’s specification.

In re Morris, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

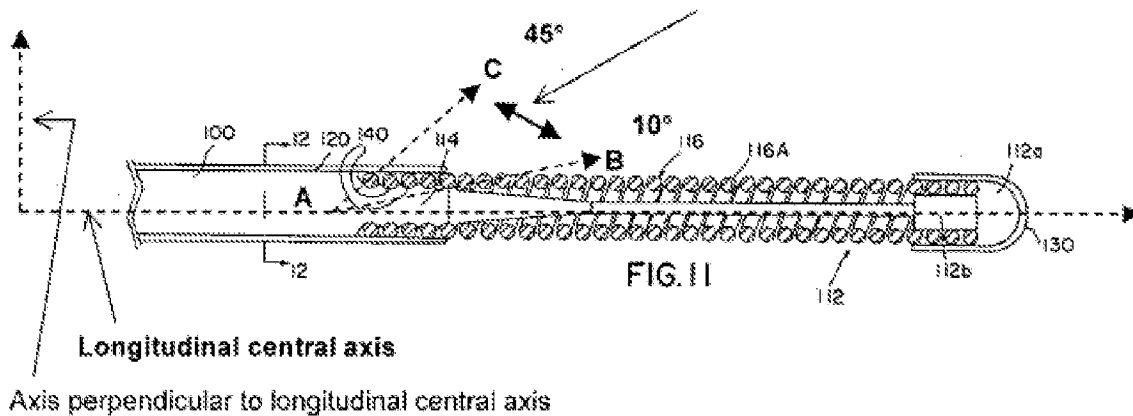
Analysis

Claim 24 is directed to a guide wire comprising, among other things, 3-24 wire strands wrapped helically parallel to one another to form a single coil with a longitudinal central axis, where the angle between the wire strands and the central axis is 10 to 45 degrees.

Appellants argue that “Figure 11 of Avellanet shows an angle between the coil 116 and the core 100 that falls outside of this range. No angle falling within the claimed range is disclosed in Avellanet.” (Appeal Br. 6.)

Appellants’ argument is persuasive. The Examiner reasons that one may assume that [Avellanet’s] angle between the longitudinal central axis and the wire strands is on the order of 70-90 degrees; however ..., one may reasonably interpret that any point along the longitudinal central axis be used as a basis for forming the angle between the axis and the wire strands.

(Answer 7). The Examiner provides the following illustration:



(Answer 8.) The diagram shows Avellanet's Figure 11 with the Examiner's interpretation of how it can be said to show that "the angle formed between point A on the axis and point B through the wire strands may be 10 degrees and likewise, the angle formed between point A on the axis and point C through the wire strands may be 45 degrees" (*id.* at 7).

The Examiner's reading of the claim is broader than would be considered reasonable when the claim is read in light of the Specification, which shows that the angle recited in the claim is the angle formed between the longitudinal central axis and the axis of the helically wrapped wire strands (FF 3). The Examiner's interpretation – that the recited angle can be measured between any point in a wire strand and any arbitrary point on the central axis – is broader than is consistent with the Specification. Since, as acknowledged by the Examiner (Answer 7), Avellanet does not describe the angle recited in claim 24 when the angle is measured as shown in the Specification's Figure 8, the rejection of claim 24 as anticipated by Avellanet is reversed.

Independent claim 48 also requires that "the angle between the wire strands and the longitudinal central axis is from 10 to 45 degrees." Thus, the

rejection of independent claim 48 and dependent claims 30, 33-35, and 38-40 as anticipated by Avellanet is also reversed.

Conclusion of Law

The evidence of record does not support the Examiner's finding that Avellanet discloses a guide wire in which "the angle between the wire strands and the longitudinal central axis is from 10 to 45 degrees."

II.

Issue

The Examiner has rejected claims 1, 2, 7-9, 12-14, 17-19, and 25 under 35 U.S.C. § 103(a) in view of Avellanet and Palermo. Independent claim 1, like claims 24 and 48, requires that "the angle between the wire strands and the longitudinal central axis is from 10 to 45 degrees." The Examiner relies on Avellanet, as discussed above, and cites Palermo only for its disclosure of the lubricious polymer required by claim 1. Since the rejection based on § 103 relies on the same claim interpretation as the rejection for anticipation, it is also reversed for the reasons discussed above.

SUMMARY

We reverse the rejection of claims 24, 30, 33-35, 38-40, and 48 under 35 U.S.C. § 102(b) and the rejection of claims 1, 2, 7-9, 12-14, 17-19, and 25 under 35 U.S.C. § 103(a).

REVERSED

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